

DECISION



21709 PL-1
IANNICELLI
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

118273

FILE: B-205610

DATE: May 4, 1982

MATTER OF: London Fog Company

DIGEST:

Protest alleging that solicitation's specifications are unduly restrictive of competition is denied. Where agency has made prima facie case to show that the specifications are related to its minimum needs, protester must bear burden of affirmatively proving its case. Even though protester disagrees with agency's determination of its minimum needs and has provided experts' opinions to support part of its protest, protester has not shown agency experts' technical opinions to be unreasonable. Accordingly, protester has not carried burden of proof.

London Fog Company has protested against invitation for bids No. DLA700-82-B-0313, issued on October 29, 1981, by the Defense Construction Supply Center, for the procurement of insecticidal fog generators. London Fog protests that the specifications overstate the agency's minimum needs and are, therefore, unduly restrictive of competition.

The protest is denied.

Initially, London Fog took exception to a large number of the invitation's specification provisions. However, at a conference on this matter held at our Office, the protester and agency were able to narrow the scope of the protest considerably and the agency also agreed to have its experts further examine London Fog's remaining issues and report on them to our Office. After receiving the Defense Logistics Agency's (DLA) reports, it is our understanding that only two protest issues remain to be resolved.

The first issue concerns the specification requirement that the air blower pressure not exceed

10 pounds per square inch. The protester contends that there is no valid reason for this requirement which effectively precludes the use of London Fog's equipment which operates at a pressure of 80 pounds per square inch.

The DLA report indicates that the low maximum blower pressure is essential to lessen the danger of the insecticide lines rupturing and of the nozzle head becoming very hot which present risks to the Army personnel who will be using the equipment. The DLA reports that, "In a combat environment, the [engineering support activity] believes that such a pressure level especially is not acceptable due to the possibility of small arms fire or shrapnel penetrating the system and contaminating equipment operators." DLA also reports that the high air volume/low air pressure method required by the specifications is necessary because it disperses the insecticide droplets over a greater distance than the low air volume/high air pressure method proposed by London Fog. According to DLA's experts, the high air volume/low air pressure is more desirable because it "stirs heavy vegetation more than the protester's method does, with the result that better penetration of the vegetation is achieved and more insecticide reaches the underside of leaves, the desired location."

London Fog disagrees with each of DLA's reasons for requiring air blower pressure of only 10 pounds per square inch. In particular, London Fog has submitted letters from experts to show that DLA's conclusion that low pressure dispersal of insecticide is more effective is wrong. London Fog's experts collectively state that the real purpose of an insecticidal fog generator is to disperse the insecticide over a greater distance, which can be achieved using high pressure, rather than on the underside of leaves as DLA contends.

The second area of contention concerns the invitation's requirement that the quality of the insecticidal fog generators be tested by passing two slides through the spray emitted and having both slides meet certain criteria concerning droplet size. London Fog argues that this requirement is unreasonable and that it would be sufficient for only one of the two slides to pass the droplet size criteria testing. DLA reports

that "the [requirement for two-slide testing] is more scientifically valid, more reliable, and can be achieved at no additional cost." In addition, DLA points out that the protester has not provided any evidence that the invitation's requirement is beyond commercial practicability.

The determination of an agency's minimum needs and how best to meet them consistent with the requirement for the broadest practicable competition primarily is the using agency's responsibility, in part, because the user is the one most familiar with the conditions under which the needs have arisen and have been met previously. Carolina Concrete Pipe Company, B-192361, March 4, 1981, 81-1 CPD 162. Moreover, we have consistently held that in technical disputes a protester's disagreement with the agency's opinion, even where the protester's position is supported by expert technical advice, does not invalidate the agency's opinion. Sparklet Devices, Inc.--Reconsideration, B-199690.2, October 8, 1981, 81-2 CPD 285.

Even though London Fog charges that the agency's determination of its minimum needs is unduly restrictive of competition, we do not believe the protester has carried the burden of proving its case. In our opinion, DLA has made a prima facie showing that the protested specifications are reasonably related to the Defense Construction Supply Center's needs. While London Fog disagrees with the agency's determinations and has even provided experts' opinions as support for some of its arguments, London Fog has not shown the expert technical opinion of the agency to be unreasonable. Therefore, we defer to the contracting agency's experts in these circumstances. Since London Fog has not affirmatively proved its case, and because it is not our practice to conduct an investigation to establish the validity of a protester's statements, which London Fog has asked our Office to do, we cannot hold that the specifications in this case are unduly restrictive. See Sparklet Devices, Inc.--Reconsideration, supra; Carolina Concrete Pipe Company, supra.

For the above reasons, we deny the protest.



Acting Comptroller General
of the United States